

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

06-CR-6024L

v.

EVERETTE TOOLE, a/k/a "E,"

Defendant.

Defendant, Everette Toole ("Toole"), together with his brother Algernon Toole were convicted after a jury trial on February 12, 2010 of two counts of conspiracy to possess with intent to distribute and to distribute cocaine. Sentencing is currently scheduled for May 18, 2010 at 2:00 p.m.

Everette Toole moved for a Judgment of Acquittal, pursuant to FED. R. CRIM. P. 29, during trial and the motion was denied. Now, post verdict, Everette Toole moves (Dkt. #299) again for a Judgement of Acquittal. The motion is denied.


I see no reason now to change the Court's prior rulings made during trial. In my view, there was more than sufficient evidence for the jury to find both defendants guilty beyond a reasonable doubt. Defendant Everette Toole did not testify. Several Government witnesses who participated with the Tooles in the conspiracy did testify, at some length. If believed, their testimony was more

than sufficient for a reasonable juror to find guilt beyond a reasonable doubt. As is often the case, the issue was one of credibility which is something for the jury to assess and determine.

CONCLUSION

The motion of defendant Everett Toole (Dkt. #299) for a judgment of acquittal pursuant to FED. R. CRIM. P. 29 is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 23, 2010.